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No. 07-945

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

VIKAS SAREEN,

*Petitioner,*

v.

REEMA SAREEN,

*Respondent.*

**Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Third Appellate District**

## REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether California Court of Appeal's determination, in conflict with other state courts of last resort, that India was not the "Home State" when duplicate action was filed in California, notwithstanding bright-line test to the contrary, violates petitioner's constitutional rights under the Privileges and Immunities Clause of Article IV, Section 2 and Equal Protection of laws under the Fourteenth Amendment.

2. Whether California Court of Appeal, Third Appellate District err in exercising jurisdiction for initial child custody determination and thereby creating simultaneous jurisdiction in conflict with other state courts of last resort and in contravention of the legislative purpose and intent of the uniform interstate jurisdictional act, the Uniform Child Custody Jurisdiction and Enforcement Act, UCCJEA, 9(1A) ULA 657 (1999) and the federal Parental Kidnapping Prevention Act, PKPA, 28 USC 1738A (1980).

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## REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner Vikas Sareen submits this Reply Brief to address new points raised in the Opposition to Petition for Writ of Certiorari ("Opp. Brief") filed by Respondent Reema Sareen. (Sup. Ct. R. 15.6)

In its opposition brief, respondent does not contest the bright-line test for determining "Home State" in initial custody determination that is central to the issues presented requiring national uniformity. Nor does the opposition brief address the conflict with other state courts of last resort when confronted with the same issue. In fact, the opposition brief misconstrues facts and proceedings below while

remaining noticeably silent on the central issues in an attempt to distract this Court's attention.

The Statement of Facts presented in the opposition brief are replete with inconsistencies and contradictions with the record below. There is documentary evidence that unequivocally proves Fraud by the respondent. Also, the record is clear on the fact that India Court was not aware of respondent leaving India and noted that such conduct will be taken into account in its order dated April 18, 2006. Respondent's opposition brief claims petitioner has never returned to India while concealing that respondent's misuse of India's Dowry Laws was itself responsible and was tantamount to interference of his parental rights, as elaborated in the record. Further, respondent in the record below has requested restraining orders alleging that petitioner has strong ties with India and may travel there only to be contradicted by her (Opp. Brief, p. 3) where she now alleges that there is no likelihood that petitioner will move to India in the foreseeable future. In fact, the Eastern District Court of California action (Opp. Brief, p.3) alleges, with documentary evidence, perjury and false statements by the respondent in numerous federal and state forms and judicial proceedings and is actionable pursuant to 18 U.S.C. §§ 1001, 1542, 1621-1623.

Similarly, respondent's procedural background on India Court is silent on material facts as presented in petitioner's brief ("Pet. Brief", p. 4-5). Further, Respondent's opposition brief misconstrues pending litigation in Eastern District of California by concealing that it is for injunctive relief and against several defendants and is noticeably silent on Perjury and

False Statements pursuant to 18 U.S.C. §§ 1001, 1542, 1621-1623 as the fourth cause of action.

## REASONS FOR GRANTING THE PETITION

### I. PENDING LITIGATION IN EASTERN DISTRICT OF CALIFORNIA DOES NOT PREVENT THIS COURT FROM GRANTING WRIT FOR CERTIORARI TO RESOLVE FUNDAMENTAL QUESTIONS OF NATIONWIDE IMPORTANCE PRESENTED IN THE PETITION.

Respondent's opposition (Opp. Brief, p. 4-5), in arguing that it is premature for this Court to grant certiorari in view of pending Eastern District California litigation, fails to acknowledge that the latter action, pursuant to 42 U.S.C. §1983, is a result of actions taken by the State of California (post-decision) in violation of his constitutional rights under the color of state law. Further, respondent's argument that these same issues will come before this Court again (Opp. Brief, p. 5) presupposes that petitioner will not prevail in that action and in fact bolsters petitioner's position for this Court to grant certiorari in view of an old maxim in jurisprudence that, "Justice Delayed is Justice Denied".

Petitioner's petition raises fundamental questions requiring national uniformity among the states. One of the fundamental purposes of this legislation is to avoid jurisdictional competition and prolonged litigation, the very results caused by respondent's duplicative action filed in California as highlighted by respondent's reference to numerous filings in this case (Opp. Brief, p. 4). Petitioner contends that multiple litigation in various forums is a direct result of respondent's own actions in a blatant attempt of

forum-shopping emanating from the fraudulent marriage and its spoils planned from the outset. Divorce, Annulment and Custody actions were pending in India where parties were married under the laws of India and in advance stage with highly developed facts and evidence, unlike California, where the court is not privy to all facts leading to the present litigation. Without addressing the fundamental issues presented in the petition, respondent now prefers to delay their adjudication to another day contrary to the plain meaning, legislative intent and policies underlying the UCCJEA and the FPKPA and in utter disregard of petitioner's constitutional rights.

## II. RESPONDENT HAS MISCONSTRUED THE FIRST QUESTION WHILE CIRCUMVENTING THE CENTRAL ISSUES.

Respondent's opposition (Opp. Brief, p. 5) artfully abbreviates the first question by deleting any reference to the bright-line test for determining "Home State" and California's conflict with other state courts of last resort. The argument, as presented, fails to address the central question of law, i.e. the bright-line test for determining "Home State" and instead devotes bulk of its argument on facts of the cited case that themselves are distorted to distract this Court's attention away from the central question of law. The child in *In re A.C.,* 130 Cal. App.4th 854(2005), lived in California from September 5, 2003 onwards and the bright-line test, as correctly applied in that case on December 31, 2003, rendered Mexico as the Home State, unlike the instant case.

Indeed, the key focus of the present litigation on the jurisdictional issue has revolved around the "Home State" and has been the key focus in pro-

ceedings below. Respondent's opposition brief fails to mention that both the trial court (Pet. Appendix B, p. 19a) and Third Appellate District Court (Pet. Appendix C, p. 24a) in California agreed with petitioner's position on the determination of Home State. Petitioner's rehearing in the same court and petition for review in California Supreme Court revolved around the issue of Home State and California's disparity with other state courts of last resort. Respondent's opposition brief is noticeably silent on case law cited from other state courts of last resort and defects in cases relied on by the Third Appellate Court opinion in adjudicating the instant case.

## III. THE SECOND QUESTION RAISES ISSUES RELATED TO AN INTERSTATE JURISDICTIONAL ACT OF NATIONWIDE IMPORTANCE AND CALIFORNIA'S DECISION IS IN CONFLICT WITH OTHER STATE COURTS OF LAST RESORT AND IN CONTRAVENTION OF COMITY AND BASIC PRINCIPLES OF INTERNATIONAL JURISPRUDENCE.

Petitioner contends that UCCJEA is an interstate jurisdictional act with nationwide significance and applicability. California's decision has set a dangerous precedent that encourages simultaneous jurisdiction in this area of law that is likely to recur in this global and migratory economy. This case is also at odds with other state courts of last resort (Pet. Brief, p. 10-12) and will create ambiguity and give rise to inconsistent decisions in the future. Petitioner contends that this case has already gained attention in the legal circles in the State of California and is likely to transcend nationally with time unless the

issue of "simultaneous jurisdiction" is addressed squarely.

Respondent's opposition brief has misconstrued the crux of the question presented with regards to the UCCJEA and the FPKPA. Petitioner contends that California erred by creating simultaneous jurisdiction. California's assertion of jurisdiction under the UCCJEA is subject to the federal Parental Kidnapping Prevention Act, FPKPA, 28 U.S.C. § 1738A pursuant to the Supremacy Clause of the U.S. Constitution, Act. VI, § 2. The FPKPA, in pertinent part states, "A child custody or visitation determination made by a court of State is consistent with the provisions of this section only if such court has jurisdiction under the law of such State . . ." 28 U.S.C. § 1738A(c)(1). As such, any order of California without adherence to its own jurisdictional statute, would not be entitled to enforcement under the FPKPA.

Federal Parental Kidnapping Act, 28 U.S.C. § 1738A embodies principles of full faith and credit as enumerated in Full Faith and Credit Clause of the U.S. Constitution, Article IV, §2. These same principles emanate from a basic principle in law of comity that accords full faith and credit to a decision made by a court of a competent jurisdiction. India is a sovereign nation and a competent jurisdiction (Pet. Brief, p. 14) and California should not have exercised its own jurisdiction, thereby creating simultaneous jurisdiction in contravention of basic principles of international law. This question is properly put forth in this petition for the underlying principles presented, definition of "state" pursuant to the FPKPA, notwithstanding. Article III of the U.S. Constitution and inherent powers of this Court render this question fit for adjudication as presented.

## IV. INDIA TRIAL COURT'S RULING WAS IN CONTRAVENTION OF DELHI HIGH COURT'S DIRECTIVE AND IS UNDER APPEAL.

Petitioner noted proceedings in India (Pet. Brief, p. 4-5) and are under appeal. It is ironic that Respondent, who has availed herself of all options in pursuing this duplicative case up to and including proceedings in this Court, wants to deny Petitioner his due process rights. Respondent cites California Family Code § 3426(a) (Opp. Brief, p. 8) to oppose petitioner's writ while opposing applicability of the same section in the proceedings below.

## CONCLUSION

Petitioner has established, and respondent does not contest, that there is a clear and irreconcilable difference between California and other state courts of last resort in fundamental jurisdictional questions requiring national uniformity. Petitioner's constitutional rights have been violated as presented in the writ petition. For the reasons set forth above and in the writ petition on file with this Court, a writ of certiorari should be granted in this case.

Respectfully submitted,

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